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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,741

03/04/2004

LaVern Alecci

04002

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23338

7590

12/15/2004

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EXAMINER

GUADALUPE, YARITZA

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,741

Applicant(s)

ALECCI, LAVERN

Examiner

Yaritza Guadalupe McCall

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/4/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the laser beam means and the second leg attached at a 45 degrees angle as stated in claims 7 and 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

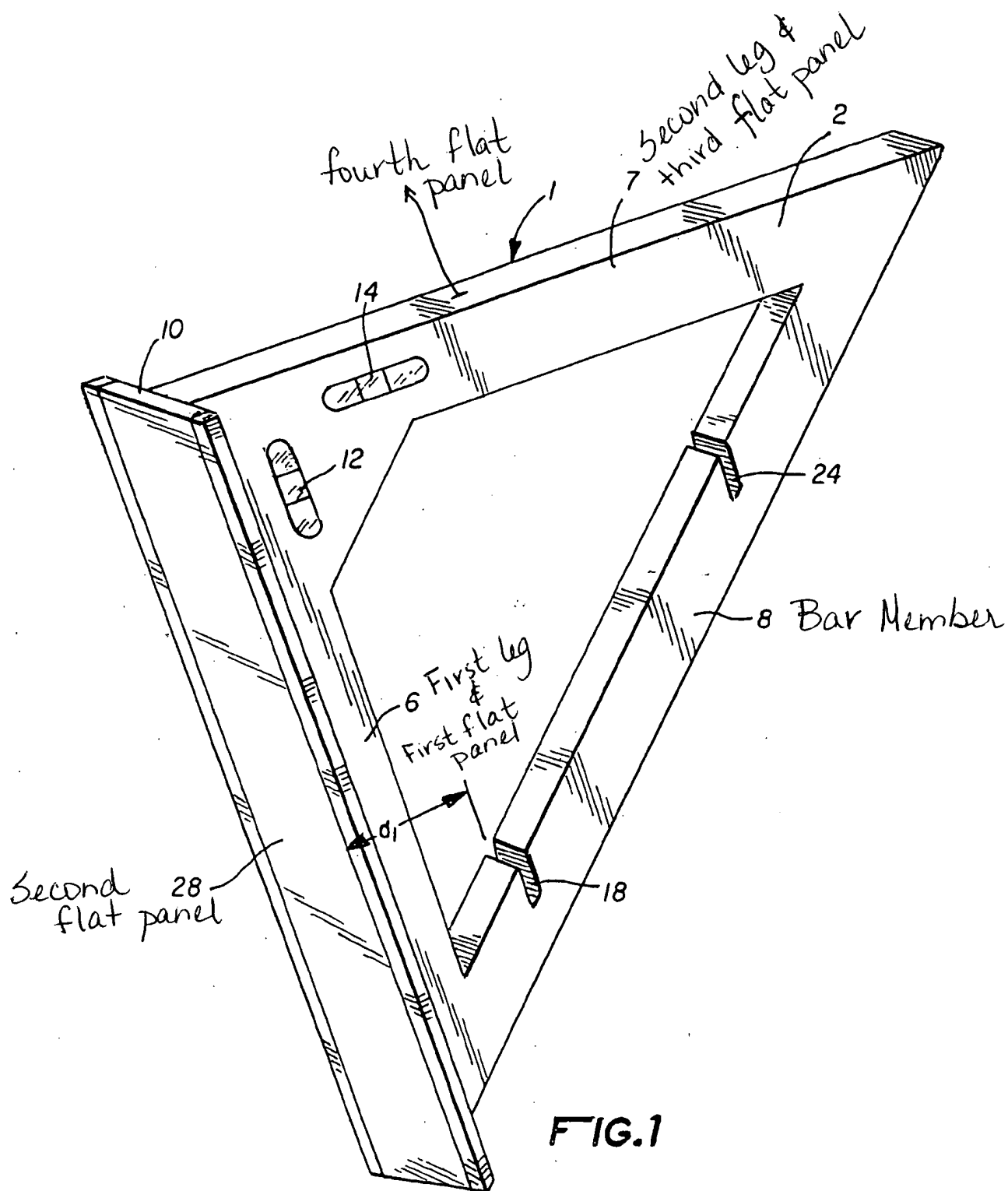
3. Claims 1 - 4 and 8 are rejected under 35 U.S.C. 102 (b) as being anticipated by Walters et al. (US 5,933,974).

In regards to claims 1 and 8, Walters et al. discloses tool comprising a first leg (6); a second leg (7) attached to the first leg at an angle, i.e., 90 degree angle as shown in Figure 1; and, a plumb bob (22) attached to the plumb bob bracket tool by a string (20), (See Figure 1).

With respect to claim 2, Walters et al. discloses a tool wherein said first leg (6) defines a first flat panel and comprises a second flat plat panel (28) attached to said first flat panel at a right angle (See attached Figure 1).

In regards to claim 3, Walters et al. teaches a tool wherein said second leg (7) defines a third flat panel and comprises a fourth flat panel (See attached Figure 1, wherein the surface adjacent to the leg is interpreted as said fourth flat panel) attached to said third flat panel at a right angle.

Regarding to claim 4, Walters et al. discloses a tool further comprising a bar member (8) attached to said first flat panel at one end and said third flat panel at second end.



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4. Claims 1 and 9 are rejected under 35 U.S.C. 102 (b) as being anticipated by Walters et al. (US 5,933,974).

In regards to claims 1 and 9, in an alternate interpretation to the reference, Walters et al. discloses a tool comprising a first leg (7); a second leg (8) attached to the first leg at an angle, i.e., 45 degree angle as shown in Figure 1; and, a plumb bob (22) attached to the plumb bob bracket tool by a string (20), (See Figure 1).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5 and 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walters et al. (US 5,933,974) in view of Sigl (US 6,430,826).

Walters et al. discloses a tool as stated in paragraph 6 above.

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Walter et al. does not disclose the plurality of apertures disposed on said first flat panel as stated in claim 5 and the plurality of fastening means for securing the tool through the apertures as stated in claim 6.

Regarding to claims 5 and 6 : Sigl discloses a placement apparatus having a first panel provided with a plurality of apertures (22) for receiving a plurality of fastening means (55) in order to mount said apparatus to the surface (See Column 4, lines 47 – 49). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a plurality of apertures and provide a plurality of fastening means as taught by Sigl to said first and third flat panels as taught by Amos in order to provide a means for securely retain the device on a surface which will help prevent undesired movement for an accurate plumb line.

7. Claims 7 and 10 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Walters et al. (US 5,933,974) in view of Rooney (US 5,481,809).

Walters et al. discloses a tool as stated in paragraph 3 above.

Walters et al. does not discloses said plum bob including a laser beam producing means as stated in claim 7.

With respect to claim 7 : Walters et al. discloses a tool as stated above, having a plumb bob (22) attached to a string (20). Rooney discloses a laser plumb bob apparatus having string (24) and a laser beam producing means (10) attached to said string in order to produce an improved laser beam consisting of a narrow, coherent light beam vertically downward to provide a laser plumb line (See Figure 2, and Column 3, lines 55 – 62). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the plumb bob disclosed by Walters et al. with a laser plumb bob as taught by Rooney in order to produce an improved laser beam consisting of a narrow, coherent light beam vertically downward to provide a laser plumb line (See Figure 2, and Column 3, lines 55 – 62).

Furthermore, the use of the particular type of plumb bob, absent any criticality, is considered to be nothing more than a choice of engineering skill, choice or design because 1) neither non-obvious nor unexpected results, i.e., results which are different in kind and not in degree from the results of the prior art, will be obtained as long as a surface can be accurately plumb, as already suggested by Walters et al. Rooney, 2) the plumb bob claimed by Applicant and plumb bob used by Walters et al. and Rooney are well known alternate types of plumb bob assemblies which will perform the same function, if one is replaced with the other, of accurately plumb and level a surface, and 3) the use of the particular type of plumb bob by Applicant are considered to be nothing more than the use of one of numerous and well known alternate types of plumb bob that a person having ordinary skill in the art would have been able to provide using routine experimentation in order to help accurately plumb and level a surface as already suggested by Walters et al. and Rooney.

In regards to claim 10, the combination of Walters et al. and Rooney discloses in combination a first stud wall and a second stud wall each having an upper beam, a lower beam, and a plurality of vertical beams therebetween (See Figure 4 of Rooney), a plumb bob bracket comprising a first leg (6, See Walters et al.); a second leg (7) attached to the first leg at a 90 degrees angle; a plumb bob (22) attached to the plumb bob bracket by a string (20), wherein said first leg comprises a first flat panel and a second flat panel attached to said first flat panel at a right angle (See attached Figure 1 of Walters et al.); wherein said second leg comprises a third flat panel and a fourth flat panel attached to said third flat panel at a right angle; and a bar (8) member attached to said first flat panel at one end and said third flat panel at a second end.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following reference are considered of relevance to the present application :

- a. Amos (US Des. 263,032)
- b. Owens Jr. (US 4,442,610)
- c. Crammer (US 2,794,263)
- d. Zerbel (US 1,838,607)
- e. Siefert (US 6,578,278)
- f. Byers et al. (US 5,473,819)
- g. Illgen (US 4,266,347)

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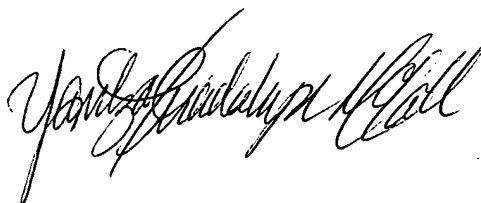
h. Byers et al. (US Des. 366,994)

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244.

The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yaritza Guadalupe-McCall
Patent Examiner
Art Unit 2859

YGM
December 13, 2004